

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

ACCESS BUSINESS LOANS, LLC,

Plaintiff and Respondent,

v.

GRACE DENTON,

Defendant and Appellant.

B259632

(Los Angeles County
Super. Ct. No. TC027387)

APPEAL from an order of the Superior Court of the County of Los Angeles,
William Barry, Judge. Dismissed.

Grace Denton, in propria persona, for Defendant and Appellant.

Hemar, Rousso & Heald, George Gost for Plaintiff and Respondent.

INTRODUCTION

Defendant, in propria persona, contends that the trial court should have granted her motion to set aside default. Because no appeal lies from an order denying a motion to set aside default, and there is no default judgment entered against defendant, we dismiss the appeal.

BACKGROUND¹

Plaintiff and respondent Access Business Loans, LLC (plaintiff) filed a complaint against, inter alia, defendant and appellant Grace Denton (defendant) arising out of defendant's guarantee of Ladera Career Paths Group's loan obligation to plaintiff. Defendant executed the underlying loan agreement on behalf of Ladera Career Paths Group as "OWNER." The loan agreement and the security agreement stated Ladera Career Paths Group's address (business address), and Ladera Career Paths Group represented and agreed that it would not change it.

Plaintiff caused defendant to be served with, inter alia, the summons and complaint by substituted service. Specifically, on April 23, 2013, plaintiff caused the summons and complaint to be left at the business address with Stacy Lusette as the "[p]erson apparently in charge," and on April 26, 2013, mailed the documents to defendant at the business address. On July 12, 2013, defendant's default was entered.

¹ We ordered and obtained the trial court's file, which file contained the complaint, summons, proof of service of summons, request for entry of default, minute orders dated April 3, 2014, April 30, 2014, and May 29, 2014, April 10, 2014, notice of ruling on defendant's motion to set aside default judgment, and plaintiff's opposition to defendant's motion to set aside default. We augment the record to include these documents.

On August 28, 2013, plaintiff obtained a default judgment, but on April 3, 2014, the default judgment was stricken presumably because of defendant's purported bankruptcy.²

On June 12, 2014, defendant, through her counsel, filed a motion to set aside the default "entered against [her] on July 12, 2013," contending that she did not receive actual notice of the lawsuit pursuant to Code Civil Procedure section 473.5, and that the order or judgment was void pursuant to Code of Civil Procedure section 473, subdivision (d). On August 14, 2014, the trial court issued an order, prepared by plaintiff's counsel, denying the motion. The August 14, 2014, order was stamped "received" on August 11, 2014. Defendant filed a notice of appeal, purporting to appeal an August 11, 2014, default judgment.

DISCUSSION

Defendant contends that the trial court erred in denying her motion to set aside default. We dismiss the appeal for lack of an appealable judgment or order.

Defendant's default was entered on July 12, 2013, and defendant's motion sought to set aside that default. There is no judgment entered against defendant. One was entered on August 28, 2013, but on April 3, 2014, it was stricken by the trial court. "[A]bsent a judgment by default, an order denying a motion to set aside a clerk's entry of default is nonappealable. (*First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 960 [134 Cal.Rptr.2d 206].)" (*City of Riverside v. Horspool* (2014) 223 Cal.App.4th 670, 679.)

The notice of appeal purports to appeal an August 11, 2014, default judgment. There is no such default judgment. It is possible that the notice of appeal erroneously refers to the "received" date—August 11, 2014—stamped on the trial court's August 14, 2014, order denying the motion to set aside default, indicating the date the form of that

² The trial court's file contains a notice of dismissal of defendant's bankruptcy.

order, prepared by plaintiff's counsel, was received by the trial court. In the absence of an appealable judgment or order, the appeal is dismissed.³

DISPOSITION

The appeal is dismissed. Plaintiff shall recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MOSK, J.

We concur:

TURNER, P. J.

KRIEGLER, J.

³ Defendant's in propria persona status does not entitle her to special treatment. "A party proceeding in propria persona 'is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys.' [Citation.] Indeed, "the in propria persona litigant is held to the same restrictive rules of procedure as an attorney.'" [Citation.]" (*First American Title Co. v. Mirzaian, supra*, 108 Cal.App.4th at p. 958, fn. 1.)